Jesus Tina,
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FILED
JUL 01 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

United States District Court
~~IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA~~
~~COUNTY OF SAN DIEGO~~
Southern District of San Diego

JESUS TINA, ROSARIO TINA, Pro se Plaintiffs , vs. HOME CAPITAL FUNDING, AMERICAN HERITAGE FINANCIAL, COUNTRYWIDE HOME LOANS, WELLS FARGO BANK DBA AMERICA'S SERVICING COMPANY, RICARDO FARIAS and MARIA FARIAS, Defendant(s),	Case No.: '08 CV 1167 JM NLS **DECLARATION OF IN SUPPORT OF EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTION AND ORDER TO SHOW CAUSE**

Plaintiffs, JESUS TINA, & Rosario Tina, file this, their Declaration under oath and under penalty of perjury, in support of their Application for Temporary Restraining Order/Preliminary Injunction and Order to Show Cause, and states as follows:

1. Plaintiffs, on or about September 16, 2005 participated in a purported Mortgage loan closing with Defendants.

2. At that time, all Defendants represented to Plaintiffs that the bedroom which had been converted from a garage, had been properly permitted and constructed.

3. In fact, said representations were false, and Defendants knew, or should have known, that said representations were false.

4. As a result of the fraudulent misrepresentations of Defendants, Plaintiffs was advised by the City of San Diego that the unpermitted bedroom conversion would have to be demolished, that Plaintiffs must vacate the premises and is not permitted to rent or lease the premises.

5. Plaintiffs further believes that their payments have been misapplied. Plaintiffs believes that some of the misapplication of their mortgage payments include, but are not necessarily limited to, incorrect interest rate adjustments, incorrect tax impound accounts, misapplied payments, misapplied escrow payments, misapplied insurance payments and other misapplied payments.

6. Defendants are seeking and attempting a non-judicial Trustee's Sale of the subject property without any judicial oversight whatsoever.

7. Plaintiffs believes that said attempted non-judicial foreclosure and Trustee's Sale is wrongful. Not only have Defendants been guilty of fraud, but Plaintiff's payments been misapplied, but Plaintiffs has not received proper notices or proper accountings. Plaintiffs believes that Defendants have violated the provisions of California law and that the actions of Defendants are wrongful. However, it is difficult for Plaintiffs to determine exactly all of the violations of Defendants without proper accountings and without a production of all of the records and documents pertaining to Plaintiff's

account, including the original note signed by Plaintiffs, as well as other records.

8. Further, Plaintiffs is unsure at this time exactly which Defendant is in fact the true owner and holder of the subject promissory note entitled to receive payment. Plaintiffs requests that Defendants produce the original signed and dated promissory note with an original signature, along with any attachments thereto to ascertain the true owner and holder of the note in question.

9. Plaintiffs believes that due to the imminent threat of a Trustee's foreclosure sale, that they will suffer irreparable injury and damage if the threatened sale is not enjoined and restrained pending a determination of Plaintiff's claims.

10. This Declaration is filed based upon Plaintiff's personal knowledge of the facts and allegations set forth in Plaintiff's application for ex parte application for temporary restraining order and preliminary injunction and order to show cause, and is made for the purposes as expressed in said application and not for any purpose of delay, and is made in good faith.

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

BEFORE ME, the undersigned authority, personally appeared Jesus Tina, & Rosario Tina, who after being duly sworn, depose and say that they have read the foregoing Declaration, and that under penalty of perjury, that the facts and allegations set forth in said Declaration are true and correct.

SWORN TO AND SUBSCRIBED this 30 day of June, 2008.

Signature NOTARY PUBLIC,
STATE OF CALIFORNIA

My commission expires:
NOTARY PUBLIC,

Jesus Tina,

Rosario Tina,
Plaintiffs/ Affiants,

Notary seal

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ODILON LUNA SANTOS
COMM. #1536892
Notary Public-California
SAN DIEGO COUNTY
My Comm. Exp. Dec 20, 2008
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